No. 82-1215

IN THE

Supreme Court of the United States

OCTOBER, TERM, 1982

FREDERICK PAUL,
Petitioner,
v.
THE UNITED STATES

AND

BARRY JACKSON AND THOMAS FENTON,
Petitioner
v.
THE UNITED STATES

ON PETITION FOR
WRIT OF CERTIORARI TO
THE UNITED STATES COURT
OF APPEALS FOR THE
FEDERAL CIRCUIT

AMICUS BRIEF OF TANANA CHIEFS CONFERENCE, INC.

TANANA

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April 21, 1983

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I. THE INTEREST OF THE TANANA CHIEFS CONFERENCE, INC.

The Tanana Chiefs Conference, Inc. is the regional Native nonprofit corporation for the Interior of Alaska, and one of the twelve Alaska Native Regional Associations listed in the Alaska Native Claims Settlement Act. The Tanana Chiefs Conference is a federation of 43 Athabascan villages in the Yukon, Koyukuk, Tanana and Kuskokwim basins in Interior Alaska. It was deeply involved in the struggle which culminated in the passage of the Alaska Native Claims Settlement Act (hereinafter referred to as ANCSA). During this time, Barry Jackson and Thomas Fenton, petitioners herein, were land claims counsel to the Conference, and about seven member villages.

Although the assets under ANCSA were vested in regional and village business corporations, the member villages and the Tanana Chiefs Conference, Inc. continue as the tribal entities of the region, exercising governmental powers and providing the full range of social services to their people. It is in the interest of the Tanana Chiefs Conference to assure future access to counsel for Native American groups seeking to redress grievances and pursue claims against the United States. It is in this capacity that Tanana Chiefs seeks to participate in urging reversal of the decision below, which we view as impinging upon the ability of Native Americans to petition for redress of aboriginal and other claims.

II. THE REASONS WHY THE TANANA CHIEFS CONFERENCE, INC. BELIEVE THE PETITION FOR CERTIOARI SHOULD BE GRANTED

The Tanana Chiefs Conference, Inc. supports the petition for the reason that the questions presented are of enormous importance to the American Native community generally and Alaska Natives in particular. We are particularly and specifically aware of the enormous difficulties experienced by Petitioners Barry Jackson and Thomas Fenton in securing attorney contracts with our villages during the period of 1967 to 1971; the uncertainty of their security in these contracts; the extent and value of their services[1]; and the chaos created by the abrogation of their contractual rights as a result of the effect of Sec. 20 of ANCSA.

More importantly, we are also profoundly aware of the difficulties that Alaskan Native groups had in securing competent counsel to assist them during the critical years of the claims settlement movement.

It is in such a context that we view the question of access to Congress to settle aboriginal claims. The history of American settlement of aboriginal land claims has been a history of conquest, one-sided treaty negotiation, contracts of adhesion, and subsequent unilateral abrogation of rights. During most of these settlements, Indians were forced to deal in a foreign legal framework subject to the political winds of the time. We are unaware of any prior such settlements outside of claims litigation, wherein American Indians were represented by counsel. In this sense, the Alaska Native Claims Settlement Act was a unique example of civilized treatment of Native Americans. While the settlement may not be "fair" as we understand that concept, at least we had the benefit of counsel. We believe that this

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Note[1]: Barry Jackson was the architect or principal designer and draftsman of the settlement act, which was initially formulated in close consultation with his village clients.

access to counsel is ancillary to and a part of our First Amendment right to petition the government for a redress of grievances.

Though we and others were not denied the right to counsel, the decision of the lower court, if allowed to stand, will substantially inhibit attorneys from representing Native Americans. They will know that their compensation is totally at risk to the whims of Congress. Such a chilling effect will unjustifiably limit Native Americans' right to counsel to petition Congress.

We recognize that Congress has sought to regulate attorney contracts with Indian tribes. 25 USC Sec. 81. We believe that when we, in our tribal capacity, enter into fair and reasonable contracts under the provision of that statute, it is in our self-interest that those contractual arrangements be honored, particularly where those contracts meet a standard of government regulation at their inception, are approved by the Secretary of the Interior, and further provide for third party review and determination of fees. We know the abuse and possibility for mischief in this area, but absent a finding of overreaching, profiteering or wrongdoing, these contracts should not be interfered with. To do so is as much a denial of due process of law and the right to counsel as a bar to the courthouse or Congressional steps.

III. CONCLUSION

The questions before this Court fairly present these issues for careful review of their implications and we ask the Court to accept this matter for review.

TANANA CHIEFS CONFERENCE, INC., PRO SE

BY: /s/ William C. Williams
President